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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,304	01/02/2002	Conley W. Giles	13471:11	2149
34399	7590	05/21/2004	EXAMINER	
GARLICK HARRISON & MARKISON LLP P.O. BOX 160727 AUSTIN, TX 78716-0727			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/039,304

Applicant(s)

GILES ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 47-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 47-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2) Claims 47-72 are finally are rejected under 35 U.S.C. § 102(b) as being anticipated by Williams (5,215,195). Applicant's claim do not claim one of the configurations, i.e. either the shipping configuration or the structural configuration, as structure. Both configurations are set forth in the manner of intended use for the plurality of three-dimensional elements to be adapted to become. Accordingly, the claimed combination packaging and structural system (of Applicants) which comprises the plurality of three-dimensional elements does not distinguish over the subject matter of Williams.

The support members 40,42 of Williams are considered to define a plurality of three-dimensional elements. The support members are made of polypropylene foam and would inherently be capable of floating in a liquid having a greater specific gravity. Each of the elements/members 40,42 includes a cavity at 44a or 44b which also defies a passage for the element since the cavity extends through the element. Inasmuch as the elements/members 40,42 are separate elements, they are capable of being located side-by-side and parallel to each other so as to define halves of a composite structure, even though the reference does not disclose such a configuration. In such a configuration the cavities 44a,44b may be aligned so that the cavities would be inherently capable of accommodating the opposed ends of a single item of appropriately sized and shaped content extending

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between or through the cavities, which would define a shipping configuration, again even though the reference does not disclose such a shipping configuration. In addition, such a configuration would be inherently capable of being received in a large enough outer shipping container, such as a large cardboard box.

In addition to such a shipping configuration, the elements or members 40,42 are capable of being interlocked in the configuration shown in Figure 5, which would be different than the above described shipping configuration. Although the interlocked configuration of Figure 5 is intended by the reference to be used to receive an item of content, such as a bottle, the interlocked configuration is inherently capable of being used in a building structure, as a part of, for example, a wall of the building structure, even though this may not be desirable and even though the reference clearly does not disclose using the Figure 5 configuration as a part of a building structure. For example it is possible to embed the Figure 5 configuration in stacked hollow bricks with aligned hollows wherein the hollows are large enough to receive the Figure 5 configuration.

Regarding the limitation calling for a tongue and groove interlock structure, the elements/members 40,42 of Williams are considered by the examiner to include a tongue and groove structure for the interlock between them. For example, the element/member 42 includes tongues formations 48b and at least a slot at formation 46b. The element member 40 includes a slot at formation 48a and a tongue on each side of the formation 48a. The element/member 40 also includes a slot a formation 46a and tongues on each side of formation 46a. Accordingly each of the elements members of Williams may be said to comprise a tongue and groove structure formed in a plurality of surfaces thereof, insofar as Applicant has claimed.

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3) Applicant's arguments with respect to rejections of the claims have been considered but are deemed to be moot in view of the new grounds of rejection.

4) Applicant's amendment necessitated the new grounds of rejection.

Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

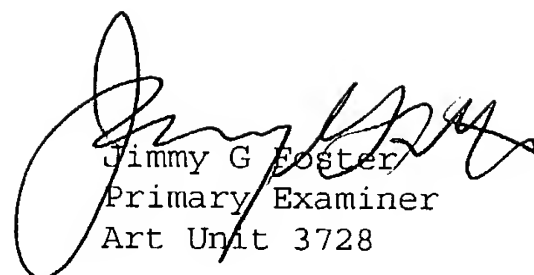
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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Jimmy G. Foster  
Primary Examiner  
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JGF

19 May 2004